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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 444th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 16 November 2000, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.444/Add.1.

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GE.00-46029 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

Second and third periodic reports of Australia (CAT/C/25/Add.11)

1. At the invitation of the Chairman, Mr. Luck, Mr. Campbell, Ms. Bicket, Mr. Heyward and Ms. Meehan (Australia) took places at the Committee table.

2. The CHAIRMAN invited the Australian delegation to introduce the second and third periodic reports of Australia (CAT/C/25/Add.11).

3. Mr. LUCK (Australia) said it was a pleasure for him to present Australia's second and third report, covering the period 1991 to mid 1997, for which he regretted the delay. He trusted that the meeting would provide an opportunity for open dialogue between the Committee and Australia on matters related to the Convention.

4. Australia had a high level of acceptance, protection and observance of human rights, founded upon a liberal, democratic system of representative and responsible government, an independent judiciary, respect for the rule of law, a free press and the tolerance and openness of the Australian people themselves. It had established a high level of implementation and understanding of its obligations providing for the protection of human rights.

5. Fundamental to the implementation of human rights treaties in Australia, including the Convention against Torture, was the federal system of government, involving a division of political and legal responsibilities between the federal Government and the governments of the Australian states and territories. It relied on the active participation and cooperation of the state and territory governments to give effect to its obligations under international treaties. However, torture and other cruel, inhuman or degrading treatment or punishment were not tolerated by any level of government in Australia.

6. Those acts were criminal offences in all jurisdictions. The criminal law moreover prohibited any attempts to commit the relevant offences as well as aiding, abetting or conspiring to commit them. Although not required by the Convention, both Queensland and the Australian Capital Territory defined torture as an offence. Both Victoria and Tasmania had legislation under which torture was an aggravating factor leading to the imposition of greater penalties. He was also pleased to report that female genital mutilation was a specific criminal offence in all states and territories, except Western Australia, where it was regarded as being an offence under its existing criminal law.

7. Australia had furthermore extended its jurisdiction to persons suspected of having committed acts of torture outside Australia by enacting the Crimes (Torture) Act 1988. In compliance with article 5, Australia had established jurisdiction over offences committed on an Australian ship or aircraft. The Extradition Act 1988 prohibited the surrender of a person unless the Attorney-General was satisfied that the person would not be subjected to torture. That Act also enabled Australia to consider a request for extradition from a State party to the Convention

in relation to a person alleged to have committed an offence under article 4 of the Convention. The Mutual Assistance in Criminal Matters Act 1987 enabled Australia to meet its obligations under article 9. In the event of acts of torture being carried out by public officials in any jurisdiction, disciplinary penalties would apply in addition to criminal charges. Thus implementation of the Convention through the combination of federal, state and territory practice was comprehensive and effective.

8. Concerns had been expressed to the Committee about the provisions for mandatory sentencing under Northern Territory and Western Australian legislation. Those governments had developed a legislative response reflecting community concern about repeat and property offences. While the Australian Government did not believe that the provisions were in breach of the Convention, it was concerned about the potential impact of the laws on juveniles, and had therefore committed 5 million dollars per annum to the Northern Territory for measures including special diversionary programmes for juveniles and the establishment of indigenous interpreter services.

9. Australians were drawn from many cultures, including indigenous people and migrants from over 130 countries. Successive Australian Governments had sought to build a social infrastructure reflecting cultural diversity and optimizing its benefits. Australians were united by a desire for social harmony, a respect for other cultures and the ideal of social equity, seeking equal opportunity for all Australians regardless of background. The Government was thus strongly committed to addressing the unacceptable level of disadvantage suffered by many indigenous Australians, and particularly their over-representation in the criminal justice system.

10. The 1991 Royal Commission into Aboriginal Deaths in Custody had found that whereas Aboriginal people were no more likely than other Australians to die in prison custody, they were more likely to be imprisoned. The response of Australian governments had focused on developing more culturally aware practices by police and courts, and establishing community-based initiatives for indigenous people to divert them away from the criminal justice system. The Government's spending on indigenous health, housing, education and employment aimed to tackle the underlying disadvantage that brought people into contact with the law.

11. The states and territories had also introduced initiatives, such as the Joint Action Plans between police and members of the Aboriginal community in New South Wales, to increase understanding and reduce incarceration rates in areas with significant Aboriginal populations. Queensland had also developed legislation recognizing the special needs of indigenous offenders, and providing community corrective services facilities to divert low risk offenders from prisons. It also provided that, wherever possible, indigenous prisoners should remain as close as possible to their communities.

12. Evidence showed that indigenous deaths in police custody had been reduced by 70 per cent since the Royal Commission, and over the previous three years the rate of indigenous deaths in prison had been lower than that of non-Aboriginal people, although the broadening of the definition of a "death in custody" had complicated comparative statistical analyses. The level of over-representation of indigenous people in prisons had fallen over the past six years.

13. Pursuant to recommendation 333 of the Royal Commission, on 28 January 1993 Australia had made declarations under articles 21 and 22 of the Convention, enabling individuals subject to Australian jurisdiction to make communications directly to the Committee. However, all the communications so far lodged from persons in Australia related not to allegations of torture within Australia but to the non-refoulement obligation under article 3, and to persons who had unlawfully entered Australia and unsuccessfully sought refugee status.

14. Australia's compliance with the Convention in respect of such persons was rigorous. Migration laws required that unlawful non-citizens be detained, and, if not granted permission to remain, that they be removed as soon as practicable. Immigration detention standards ensured a high standard of culturally appropriate and humane care whilst in detention. Health, welfare, educational, religious, recreational and interpreting services and facilities were provided. Particular attention was paid to those persons who had suffered torture or trauma prior to arriving in Australia. All detention staff were trained to recognize symptoms of torture and trauma and to refer the person for medical attention. In addition, a bridging visa mechanism existed for the temporary release of detainees with a special need arising from a previous experience of torture or trauma. There was a national network, the National Forum of Services for Survivors of Torture and Trauma, with specialist torture and trauma counselling and rehabilitation agencies operating in every state and territory of Australia, providing detailed assessment of individual cases and an individualized counselling and rehabilitation programme.

15. Australia had a robust and exhaustive administrative process for refugee determinations to ensure it met its non-refoulement obligations under the Refugees Convention, the International Covenant on Civil and Political Rights and the Convention against Torture. The refugee determination process involved a comprehensive assessment of the circumstances of the individual, the credibility of their claims and the circumstances of the country to which they would be returned. Persons potentially subject to torture but not covered by the obligations under the Refugee Convention were automatically assessed against the Minister's guidelines for the exercise of his public interest intervention powers to grant a visa on humanitarian grounds. Cases decided by the Refugee Review Tribunal were normally reassessed by the Minister within four weeks. If there were substantial grounds for believing that a person would be in danger of being subjected to torture, alternative destinations for resettlement or grant of a visa to remain in Australia would then be considered.

16. The Australian Government was however concerned about increasing resort to the communication mechanism under article 22 by failed asylum-seekers, apparently in an effort to delay their removal from Australia. Australia had been notified of 17 such communications, and the Committee had requested non-binding interim measures in each case. In nearly all cases such people had had their claims under the Refugee Convention, the Torture Convention and the International Covenant on Civil and Political Rights exhaustively considered by domestic processes, and had utilized multiple layers of review. It was also of concern that most people would remain in detention while their communication was under consideration.

17. Following a review by the Australian Government of its interaction with the United Nations treaty body system, the decision had been taken to closely examine each request

for interim measures rather than automatically complying with such requests. T[illegible]d not mean that Australia would refuse such requests, but it would more closely examine the circumstances of the individual. In the meantime, the person concerned would be allowed to stay in Australia.

18. Australia was and would remain a strong proponent of the universal application of human rights standards; it was a party to all the key human rights treaties, and had sought to work with the treaty committee system to enhance its effectiveness. Australia had been engaging in constructive dialogue with the United Nations, members of committees and other interested States regarding ways in which the human rights monitoring system could be made more effective. Its own views on improvements embraced ideas about the working methods of the human rights treaty committees, tighter and more effective focus on their respective mandates and priorities, and giving appropriate weight to submissions and evidence presented by democratically elected governments. It also included consultation between the different committees to coordinate reporting timetables and facilitate cooperative work on reform issues, and addressing the inadequate resources available to the Committees.

19. In conclusion, he assured the Committee that torture and other acts of cruel, inhuman or degrading treatment or punishment were not tolerated in Australia. The democratic system, independent judiciary, respect for the rule of law and the array of Commonwealth, state and territory legislation and practice operated to prevent such acts taking place and to require a thorough investigation of any allegation that such acts had taken place. They were robust mechanisms, affording rigorous protections.

20. The Australian delegation welcomed the opportunity to respond to comments and questions from the Committee and looked forward to a mutually beneficial dialogue.

21. Mr. CAMPBELL (Australia) explained that the Australian Constitution provided for a federal system dividing powers and responsibilities between the federal Government and state governments. At the federal level and in each state there was a parliament elected by the people, an executive responsible to that parliament, formed by the majority party or parties in parliament, and an independent judiciary. The Australian Constitution set out the specific areas of powers of the federal Government. Each of the constituent states had broad law-making powers under its own separate constitution; although a state law inconsistent with a valid federal law would be inoperative.

22. Against that background, it was worth noting that treaties were not self-executing in Australia and did not become part of Australian law or create rights or impose obligations in domestic law unless given effect in domestic legislation. However, it was the Australian Government's policy not to enter into a treaty unless Australian law was in conformity with the terms of the treaty.

23. There was no single federal law giving effect to the Convention, since much of the public and legal infrastructure in Australia existed at state and territory level, including administration of the general criminal law, prisons, the police and the health system. Therefore, Australia had chosen to implement the Convention through a combination of strong democratic institutions, the common law, and an extensive range of statutes and administration at the state and federal level. That was in conformity with article 2.1, which recognized that the constitutional processes of the

various parties were different, and did not impose on States any particular method of giving effect to the Convention. What was possible for a country with a unitary system of government might not be legally or practically possible under a federal system.

24. At an international level, it was the federal Government that was responsible for any breaches of Australia's international obligations, but such breaches as might occur were preferably overcome through cooperation rather than the unilateral resort to a federal power. While the federal parliament did have the power to enact laws to give effect to Australia's obligations under a treaty, it was subject to express limitations of its powers to affect state governments. Therefore, Australia, in line with its federal constitution, had adopted a cooperative approach with the states and territories in giving effect to the Convention and to the implementation of other treaties to which it was a party.

25. Mr. MAVROMMATIS (Country Rapporteur) thanked the Australian delegation for their assurances of Australia's strong support for universal application of human rights. It was heartening to hear it restated at a period when the media was sensationalizing Australia's new approach to the treaty bodies, causing anxiety in human rights circles and giving comfort to certain States seeking to defend the stance of their own regimes. Australia had indeed always been in the forefront in promoting human rights and in promulgating international treaties.

26. Australia was aware that the purpose of the dialogue was a friendly exchange of information enabling the identification of drawbacks and possible contraventions, and the suggestions of remedial actions to be taken. Although it had a healthy respect for fundamental rights and freedoms, no country was perfect. He thanked NGOs for their contribution to the Committee's understanding, and expressed how helpful it was to have the involvement of local NGOs. He wished it to be noted, however, that information was not accepted uncritically, but was drawn to the attention of the States parties for their response.

27. He was aware that poverty had given rise to waves of immigrants, some of whom were masquerading as political refugees. That was a phenomenon which affected public sentiment in many countries and had become a political issue; human rights sometimes suffered as a result.

28. He began his comments on the second periodic report (CAT/C/25/Add.11) by asking the Australian delegation why it had been overdue. As the report only covered the period up to 1997, the Committee would need to be apprised of developments since that time.

29. The Australian delegation had referred to the Committee's requests for interim measures. Given the nature of communications, it was crucial for such requests to be granted. If someone was wrongfully expelled or returned, there was a serious risk of torture. Before requesting interim measures, the Committee made certain that there was good reason for doing so.

30. Australia's effort to improve the work of the treaty-monitoring bodies was praiseworthy. It was, however, important that a change in government should not lead to a change in State policy on such issues.

31. He was pleased that Australia had ratified the optional protocol and had declared that it recognized the competence of the Committee to receive and consider individual communications.

32. With regard to article 1, he said that the Committee could not dictate how States parties implemented their obligations under the Convention, provided that all acts of torture were covered. The Committee had received many reports from NGOs alleging that some acts of torture were not included in Australian legislation. However, not a single specific instance had been cited in which a person had allegedly committed acts constituting a violation of article 1 but had not been punished because national legislation failed to qualify such acts as torture.

33. Could the Australian delegation comment on reports which the Committee had received alleging that unusually harsh mandatory sentences were imposed for certain offences?

34. Paragraph 5 of the second periodic report stated that Australia relied on the detailed Convention definition of torture when interpreting that instrument for domestic purposes. Had there been any study confirming that that was in fact the case? What would the Government of Australia do if it learned that someone who had committed an act of torture for which provision was made in the Convention had not been punished because there was a lacuna in national law? Would it attempt to amend the relevant legislation?

35. Could the Australian delegation inform the Committee whether there were any new developments on the findings of the Standing Committee or the Smith Report?

36. Australia had inquired into allegations of torture, but the Committee sought more detailed information on recommendations which had not been implemented. He was pleased to note that there had been a reduction of the number of Aboriginals in prison and of deaths in custody. Information from NGO sources was somewhat at variance with that provided by the Australian delegation, perhaps because some statistics might include persons who were not, strictly speaking, in custody but were performing community service. There were of course social, historical and other reasons for the over-representation of Aboriginals in prison. Had there been any initiatives to reverse that situation? Might not affirmative action measures be contemplated to compensate for past discrimination?

37. The report by the Death in Custody Watch Committee Inc. WA cited a number of cases. In one, the medication of a person being held at Casuarina Prison had been thrown away; in another, a person who had made unsubstantiated complaints about a prison warden had been charged with false accusation and given an additional prison sentence. As a result, other prisoners were afraid to make any complaints. Just the day before, the Committee had received two reports; one alleged that a person named McKennan had been ill-treated in a police station and that the incident had been filmed on video by the police. The other case concerned a young woman in custody, Jody Michaels, who had complained of severe pain. She had been examined by a physician, who had not found anything wrong; 48 hours after her release, however, she had died of peritonitis. Could the Australian delegation comment on those two cases?

38. Most of the reports received concerned alleged acts of cruel, inhuman or degrading treatment or punishment, which did not amount to torture and which thus came under article 16.

Given the number of NGOs, he was surprised that there had never been any case of an allegation of torture, which, after the exhaustion of domestic remedies, had been brought before the Committee. He therefore advised NGOs to exhaust such remedies and then bring the case before the Committee.

39. He asked the Australian delegation to provide information about the national model criminal code. Did it refer to any offences as constituting acts of torture? Did it contain any provisions on punishment?

40. He noted that Australia had a review procedure in place, which on the whole complied with its obligations under article 3. He was worried, however, that detention of asylum-seekers seemed to be automatic. He called on Australia to consider whether it was always necessary to hold such persons in detention. There were reports that detention centres were in remote places that were inaccessible for legal counsel and that the review of asylum requests sometimes took years. Could the Australian delegation comment on the current situation? Were any measures being taken to speed up the review process or make legal assistance more readily accessible?

41. The information provided by NGOs on article 16 listed a number of complaints. In particular, there were reports of persons in custody having been tied down or sprayed with pepper gas. How were those allegations being investigated? What was done when such allegations were substantiated?

42. Mr. RASMUSSEN (Alternate Country Rapporteur) began by noting that in its future reports, it would be helpful for the Australian delegation to consider each article of the Convention separately. That would make it easier to assess their implementation.

43. He had a number of specific points to make. First of all, he said that he was pleased to learn that information regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment was included in a range of military courses (para. 71) and that immigration officers received training on cross-cultural sensitivity and on identifying victims of torture and trauma for referral to appropriate counselling and support services (para. 75): that was exactly what was called for. In many countries, immigration officers had no idea what torture victims were, how they behaved etc. He trusted that such training was also provided to guards at detention centres. He commended Australia for its many torture treatment centres and hoped that they helped in training guards at places of detention and immigration officers. He also thanked Australia for its contribution to the United Nations Voluntary Fund for Victims of Torture.

44. Police officers and prison officers were those groups most likely to be involved in acts of abuse or torture, yet from the report's description, he was not certain that such persons were really being trained in torture prevention or that the expertise of rehabilitation centres was being tapped. He asked the Australian delegation to comment on that point. He also drew attention to the importance of the recruitment procedure when hiring police officers and prison staff. In that connection, there had been alarming reports that South African law enforcement personnel with a bad record had been recruited. Could the Australian delegation confirm that assertion? He would also welcome it if Aboriginals and other minorities were recruited as police officers and prison staff. That would help alleviate some of the problems cited by NGOs. Australia might

want to make use of the excellent manuals which existed on training police and prison staff. He inquired about the training courses for public medical officers, who were mentioned briefly in paragraph 81 of the report. Were there police doctors who received special training in recognizing the effects of torture or ill-treatment?

45. Turning to article 11 of the Convention, he asked whether Australia had issued interrogation rules for police officers and, if so, whether they were systematically reviewed. According to the report, investigating officers were encouraged to make audio or video recordings of interviews, but he gathered from paragraph 89 that they could dispense with the practice in cases where they had a "reasonable excuse". The same paragraph implied that recordings were necessary only when a person was accused of a serious offence. But in his experience, persons accused of petty offences were no less likely to be subjected to ill-treatment. He also suspected that, as in many other countries, minorities might run a greater risk of being tortured. He therefore recommended that the use of recording equipment should be made mandatory for all interrogations. Such a step would be in the interest of investigating officers, since it would offer protection against false charges; it would facilitate the systematic review of interrogation rules and could prove an extremely effective police training tool. Paragraphs 109 to 112 described a case of alleged assault by the South Australian Police in which a video recording afforded valuable evidence. On the other hand, he found the penalty of a 400 Australian dollars fine unduly lenient, given that the South Australian Criminal Law Consolidation Act provided for a penalty of 5 to 8 years' imprisonment for the offence of assault occasioning harm. He seriously doubted whether the police officer in question should have been allowed to remain in the force. It should be made quite clear that such conduct would not be tolerated under any circumstances. Referring to article 14 of the Convention, he asked what kind of redress was available to victims of police misconduct. How many cases had there been in recent years and what had been the outcome?

46. Turning to article 13 of the Convention, he asked the delegation to provide figures for complaints filed in the prison system. All detainees should have access to a complaints authority and the complainant and witnesses should be protected against intimidation. Allegations to the contrary had been made in the NGO material made available to the Committee. The Australian report referred to complaints mechanisms involving the Ombudsman and official visitors or inspectors. Could inmates also file complaints to the prison governor and, if so, what was the procedure for dealing with them and what steps were taken to prevent prison officers from taking revenge on the complainant?

47. The report to the Committee by the NGO "Death in Custody Watch Committee" referred to the excessive use of force and various methods of physical restraint. While it was virtually impossible to avoid using some measure of restraint in a prison context, it should be kept to the minimum and reported in all cases to the governor. He recommended compiling a register of cases in which restraint was used, inter alia as a source to be consulted in connection with allegations of the abusive use of force.

48. He asked the delegation to specify the types of restraint devices carried by prison guards, such as tear gas, pepper gas, batons and various kinds of weapons. In his view, no such devices should be carried inside the prison since they were not conducive to sound interaction between prisoners and staff. Were inmates sometimes placed in solitary confinement and, if so, for how

long? What other kinds of punishment existed, were they ordered by the prison governor and was there an appeal procedure? There had been allegations of overcrowding in Australian prisons. He asked for comparative figures on prison capacity and the current number of inmates. In that connection, he urged the Australian prison authorities to be more proactive in keeping prisoners busy through education or work. Experience showed that aggressive behaviour was less common when inmates were kept occupied for a large part of the day. Was it true that in some cases juvenile detainees were held together with adults? What was the minimum age at which persons could be deprived of their liberty?

49. With regard to the reports of a large number of suicide attempts in prison, he stressed the importance of training medical personnel to detect any signs of a suicide risk among inmates, for example during the initial screening on admission. On no account should a person with suicidal tendencies be placed in solitary confinement. Serious suicidal cases should be transferred to a psychiatric establishment. He asked whether inmates and their lawyers could obtain copies of medical evidence related to ill-treatment.

50. He commended the Australian authorities on their efforts to reduce the number of aboriginal deaths in custody and suggested that future inquiries should be extended to cover the entire prison population. Forensic autopsies should be carried out in all cases by a person who was not a prison doctor.

51. He wished to know how many refugees and asylum-seekers had been deprived of their liberty and the average time it took to have their cases decided.

52. Mr. CAMARA, referring to the treatment of indigenous persons in the criminal justice system, drew attention to the definition of torture in article 1 of the Convention, which included severe pain or suffering inflicted for any reason based on discrimination. He would welcome the delegation's comments on whether the treatment of indigenous persons might be perceived as torture within the meaning of article 1.

53. He said that problems relating to the applicability of the Convention under domestic law arose in both common-law and civil-law countries. The Vienna Convention on the Law of Treaties contained a provision to the effect that pacta sunt servanda. He invited the delegation to address the issue in the light of that provision.

54. The draft model criminal code was an interesting initiative. However, he understood from paragraph 50 of the report that torture would be treated in the code as an aggravating factor in cases of assault causing bodily harm. But article 4 of the Convention required States parties to ensure that all acts of torture constituted sui generis offences under its criminal law.

55. Ms. GAER said she would welcome information on the extent to which the Australian population has been involved in the reporting process through interaction between the authorities and NGOs, parliamentary committees, academics and other relevant bodies and individuals.

56. According to paragraph 8 of the report, there had been no new legislation to enact the revisions of the Convention since Australia's initial report. While paragraphs 10 to 37 contained heartening information about the results of inquiries by parliamentary commissions and other

scrutiny mechanisms, concerns had been raised about the effectiveness of nationwide compliance with human rights treaties in federal systems. The practice of addressing shortcomings through political negotiations between the federal authorities and the states did not necessarily offer an acceptable alternative to centralized action by a State party to ensure that its treaty obligations were honoured in all parts of the country. She asked whether the Australian Government was satisfied with the performance of the states and whether there were any areas in which it was making a special effort to remedy lacunae.

57. She understood that the obligation of non-refoulement under article 3 of the Convention was left to ministerial discretion rather than the operation of the law. In June 2000, the Senate Legal and Constitutional Committee had reportedly raised questions in that regard, indicating that, in its view, the ministerial guidelines did not create enforceable rights and safeguards against refoulement but introduced an element of uncertainty into the process. She sought assurance that safeguards existed in practice through the mechanism of ministerial discretion.

58. There had been allegations of patterns of police brutality and the many government reports suggested that there were unsafe detention facilities and that excessive use was made of force and solitary confinement. It had been suggested that criminal legislation was discriminatory in some cases or failed to guarantee non-discriminatory treatment. She asked whether the recommendations of the various commissions and inquiries cited in the report were being implemented and whether the monitoring process was continuing. She would be interested to hear whether the states were proving cooperative or were reluctant to implement the recommendations. The conditions in maximum security prisons were a matter of special concern, particularly in the light of allegations of excessive and improper use of physical restraint such as chemical sprays, shackles, hobbles, handcuffs and full-body "restraint beds", which could constitute a breach of article 16 of the Convention. Special handling units were said to be used for punitive purposes and prisoners were allegedly kept in their cells under the "lockdown" system for unduly long periods, especially in Casuarina Maximum Prison and Bandyup Women's Prison. What measures were adopted to monitor the maximum security facilities, what complaint mechanisms existed for prisoners and how were complainants protected from reprisals?

59. She said that, to judge from information on Western Australia taken from the Nevill Parliamentary Standing Committee Report of June 2000, mandatory sentencing policies appeared to have a special impact on three vulnerable groups: Aboriginal people, who accounted for one third of the prison population, although they represented only 3 per cent of Western Australia's overall population; women, whose rate of imprisonment was double the national average; and juveniles, whose rate of imprisonment was the second highest in the country. Poverty was also an issue: more than 57 per cent of Aboriginal women in Western Australia's prisons had been sentenced for fine default; many prisoners were from low-income strata; 76 per cent had been unemployed before imprisonment; and 75 per cent had only primary education. Mandatory sentencing resulted in imprisonment for trivial offences, yet, as the Convention on the Rights of the Child said, incarceration should be a last resort, not a first resort. She wondered how the State party might deal with that pattern in order to protect the vulnerable and avoid dramatically increasing the prison population.

60. Turning to gender-related questions, she said that, in general, statistics disaggregated by age, sex, race and ethnicity would be useful in understanding the report. More specifically, she asked whether there was any monitoring of sexual violence in prisons, what complaints procedure was in place and whether women had equal access with men to such procedures. She also wondered whether Australia recognized gender-based grounds for granting asylum, such as the threat of female genital mutilation. There had recently been a case where a pregnant woman who had been returned to China had had her pregnancy terminated under the population laws.

61. With regard to the detention of asylum-seekers in general, she wondered what lessons had been learnt from the events that had occurred in June 2000, involving a mass escape and peaceful protest by asylum-seekers, and culminating in the release of more than 1,700 asylum-seekers. In general, how were refugees treated in such centres, especially those in remote areas? What training was given to officers and staff, particularly in recognizing and counselling torture victims and making provision for children?

62. The CHAIRMAN said that an Australian Senate committee had recently concluded that article 3 of the Convention had not been incorporated into domestic law. If that was the case, it was not clear that administrative practices at either the federal or the state level could be relied on to ensure the effective implementation of article 3. He asked the delegation to clarify whether article 3 was in fact a part of Australia's domestic legislation. If it was not, how could Australia be said to be complying with its obligations under the Convention?

63. According to the report, Australia complied with article 15 of the Convention by virtue of the fact that the law prohibited the use of extorted confessions in evidence (paras. 86-89). However, as any criminal defence lawyer knew, what was significant was not the confession but any physical evidence that might be discovered as a result of that confession. Was physical evidence so obtained in fact admissible in Australian courts? If so, could it be said that the spirit of article 15 was being observed?

The public part of the meeting rose at 12.25 p.m.